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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|-----------------------|---------------------|------------------|
| 10/607,827 | 06/27/2003 | Marvin Dimitrios Base | 1246-2 CIP | 8436 |

7590 05/17/2006

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| EXAMINER |
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AHMED, HASAN SYED

| ART UNIT | PAPER NUMBER |
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1615

DATE MAILED: 05/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/607,827

Applicant(s)

BASE ET AL.

Examiner

Hasan S. Ahmed

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-43 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 32-43 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 5/10/04, 9/29/03
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: ____

DETAILED ACTION

Receipt is acknowledged of applicant's IDS filed on 10 May 2004 and applicant's representative's Request for Withdrawal as Attorney or Agent filed on 10 December 2004.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 32-34 and 38-43 are rejected under 35 U.S.C. 102(b) as being anticipated by Shaw, et. al. (U.S. Patent No. 4,747,881).

Shaw, et. al. disclose an ingestible delivery system for nutritional ingredients, including vitamins and minerals (see col. 3, lines 15-20; col. 4, lines 51-54).

The disclosed ingestible delivery system is the instant composition as claimed; a firm gelled delivery vehicle comprising a gum (up to about 10% by weight of the delivery system), nutritional ingredients, and a liquid (up to about 75% by weight of the delivery system) (see col. 7, lines 17-24; col. 4, lines 51-54; col. 7, lines 34-45). The nutritional ingredient is interspersed and suspended in the delivery vehicle (see col. 6, lines 38-41; col. 7, line 1-col. 8, line 2).

A disclosed gum is the carrageenan of instant claim 33 (see col. 7, line 21). Disclosed nutritional ingredients are the vitamins and minerals of instant claim 34 (see

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col. 4, lines 51-54). A disclosed liquid is the water of instant claim 38 (see col. 7, line 36).

Other ingredients of the ingestible delivery system disclosed by Shaw, et. al. are: the sweetener of instant claim 39 (see col. 6, lines 33-36); the preservative of instant claim 40 (see col. 8, line 26); the color of instant claim 41 (see col. 6, lines 33-36), the flavor of instant claim 42 (see col. 6, lines 33-36); and the acid of instant claim 43 (see col. 6, lines 33-36).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 32-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaw, et. al. (U.S. Patent No. 4,747,881).

Shaw, et. al. disclose an ingestible delivery system for nutritional ingredients, including vitamins and minerals (see above).

Shaw, et. al. explain that the disclosed delivery system is beneficial because of increased palatability, leading to increased patient compliance (see col. 1, lines 5-19).

While Shaw, et. al. do not explicitly teach the ranges of instant claims 35-37, it is the position of the examiner that it would have been obvious to one of ordinary skill at the time the invention was made to determine said ranges through routine or manipulative experimentation. Generally, ranges do not support the patentability of

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subject matter encompassed by the prior art unless there is evidence indicating the criticality of such a range. "[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation." *In re Aller*, 220 F.2d 454, 456; 105 USPQ 233, 235 (CCPA 1955). Applicants have not demonstrated any unexpected or unusual results, which accrue from the instant ranges of daily value of each vitamin and mineral per serving. The prior art clearly teaches use of vitamins and minerals at therapeutic doses (see abstract; col. 3, lines 10-14; col. 4, lines 51-54).

A person having ordinary skill in the art at the time of the invention would therefore find motivation to add nutritional ingredients and liquid to a firm gelled delivery vehicle. Motivation would come from increased patient compliance, as discussed above.

Therefore, those of ordinary skill in the art would expect similar results from the instant composition, given the teachings of Shaw, et. al. The instant invention would have been obvious given the teachings of Shaw, et. al.

Correspondence

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Hasan S. Ahmed whose telephone number is 571-272-4792. The examiner can normally be reached on 9am - 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael P. Woodward can be reached at 571-272-8373. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'M. Woodward', is positioned above the printed name.

MICHAEL P. WOODWARD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600